UNIVERSITY OF ILLINOIS

TRUST MORTGAGE.

Leavenworth, Lawrence and Galveston

RAILROAD COMPANY,

OF KANSAS,

TO

THE FARMERS LOAN AND TRUST COMPANY,

OF NEW YORK.

CHICAGO:
ROUNDS & JAMES, BOOK AND JOB PRINTERS, 46 STATE ST.
1869.

TRUST MORTGAGE.

Leavenworth, Lawrence and Galveston

RAILROAD COMPANY,

OF KANSAS,

TO

THE FARMERS LOAN AND TRUST COMPANY,

OF NEW YORK.

CHICAGO:
ROUNDS & JAMES, BOOK AND JOB PRINTERS, 46 STATE ST.
1869.

332.72
L57t

TRUST MORTGAGE.

LEAVENWORTH, LAWRENCE AND GALVESTON RAILROAD COMPANY, OF KANSAS,

TO

THE FARMERS LOAN AND TRUST COMPANY, OF NEW YORK.

This Indenture, made this First (1st) day of July, in the Year of Our Lord One Thousand Eight Hundred and Sixty-Nine (1869), between the "Leavenworth, Lawrence and Galveston Rail Road Company," a Corporation duly organized under and in accordance with the laws of the State of Kansas, party of the first part, and the "Farmers Loan and Trust Company," a Corporation duly incorporated and organized under the laws of the State of New York, and by its Charter authorized to take and execute trusts of the nature herein created, party of the second part:—

WITNESSETH, That WHEREAS the said "Leavenworth, Lawrence and Galveston Rail Road Company," pursuant to the terms of the Statutes and Acts of the Legislature of the said State of Kansas creating it, and of the organization of said Company under and in accordance therewith, is engaged in constructing a Rail Road from Lawrence, in the County of

Douglass and State of Kansas, southwards through the Counties of Franklin, Anderson, Allen, Neosho, and Labette, to the south line of the said State of Kansas, and has already constructed, and has now in operation from Lawrence southward, twenty-five miles of its said Rail Road, and has graded and prepared the road-bed for the iron to Garnette, a further distance of about twenty-five miles, and will soon have the same in operation; and

WHEREAS, by an Act of Congress entitled "An Act for the grant of lands to the State of Kansas, in alternate sections, to aid in the construction of certain Rail Roads and Telegraphs in said State," approved March 3d, 1863, and a treaty between the United States of America and the Great and Little Osage Indians, concluded September 9th, 1865, and approved by the Senate and proclaimed January 21st, 1867, and an Act of the Legislature of the State of Kansas entitled "An Act to accept a grant of lands made to the State of Kansas by the Congress of the United States, to aid in the construction of certain Rail Roads and Telegraphs in said State, and to apply the same to the construction of said Roads and Telegraphs," approved February 9th, 1864, there were granted to the said Rail Road Company, to aid in the construction of its said Rail Road, the alternate sections of land lying within a distance of ten miles on either side of its said Rail Road, with the right to make up for any of such lands as had been theretofore disposed of, or claimed by exemption under the laws of the United States, out of the odd sections lying on each side of said Rail Road and within a distance of twenty miles of its said line, which said lands have been reserved from sale by the General Government, and in virtue of the Treaties and Acts aforesaid have become the property of said Rail Road Company, and are and will be in the possession of said Company as fast as its Rail Road shall be constructed through the same, and amounting in the aggregate to about Six Hundred Thousand Acres; and

WHEREAS, by an Act of the Legislature of the State of Kansas, entitled "An Act providing for the sale of Public Lands to aid in the construction of certain Rail Roads," approved February 23d, 1866, there was granted to the said Rail Road Company the further amount of One Hundred and Twenty-Five Thousand Acres of land, with the proceeds thereof when sold, and which last mentioned lands have been duly conveyed to said Company by the said State of Kansas; and

WHEREAS, certain of the Counties along the line of the said Leavenworth, Lawrence and Galveston Rail Road have issued and agreed to issue their Bonds to said Company, to aid it in the construction of its said Rail Road, as follows: The County of Douglass have issued and agreed to deliver to said Company its Bonds to the amount of Three Hundred Thousand Dollars; the County of Franklin, its Bonds to the amount of Two Hundred Thousand Dollars; the County of Anderson, its Bonds to the amount of Two Hundred Thousand Dollars, and the County of Allen, One Hundred and Twenty-Five Thousand Dollars; making, in the aggregate, of said Bonds now issued and agreed to be issued and delivered to said Company the sum of Eight Hundred and Twenty-Five Thousand Dollars; and the said County of Allen is expected to increase its amount to Two Hundred Thousand Dollars, and the Counties of Neosho and Labette may, and are expected in like manner, to issue and deliver to said Company, County Bonds to aid in the construction of said Road; all of which said Bonds bear interest at the rate of Seven per cent. per annum, payable annually, and are to be delivered to said Company as fast as said Rail Road is constructed through said respective Counties; and

WHEREAS, the said Rail Road Company is desirous of borrowing money for the purpose of constructing and equipping its said Road, and paying its obligation for, and Taxes upon its said property and lands, and defraying all the necessary expenses of right of way, transportation, and all other charges connected with building, equipping, and operating said Rail

Road, and all the various appendages and appurtenances connected and to be connected therewith; and has resolved to execute and issue the Bonds of said Company in sums of One Thousand Dollars each, bearing date the first day of July, A. D. One Thousand Eight hundred and Sixty-nine (1869), and bearing interest at the rate of Ten per cent. per annum, free of Government, revenue or other Tax, and payable semi-annually with both principal and interest, payable in the City of New York, to an amount which shall not, in the aggregate, exceed Five Millions of Dollars, and having not more than Thirty years to run to maturity; and has also resolved to secure the punctual payment of the same, both principal and interest, by Mortgage or Deed of Trust of all the said lands and Rail Road, and all its corporate property and franchises, of every nature and kind, to the party of the second part, Trustees and Mortgagees, for the benefit and security of the holders of said Bonds, all of which said Bonds shall bear the same date and are to be duly stamped with the revenue stamps required by law, and are to stand equally secured by the said Deed of Trust, though issued, sold, and maturing at different times, and shall all be numbered consecutively from number one to the highest number which may be issued inclusive, and each of which said Bonds shall be authenticated by a certificate, signed by the said party of the second part, as being issued and secured by this Deed of Trust.

It is, however, understood and agreed that this Instrument and the said Bonds are made with a reservation of the right by the said party of the first part, to repay and retire the said Bonds, in whole or in part, any time after the expiration of five years from the date hereof, by applying to the purchase of the same, by lot at par and accrued interest, the Sinking Fund created by this Deed of Trust or Mortgage in the manner herein provided.

NOW, THEREFORE, this Indenture witnesseth, that the said Leavenworth, Lawrence and Galveston Rail Road Company,

in order to secure the payment of the said Bonds, and the interest thereon, and in consideration of the sum of Five Dollars to it in hand paid by the said party of the second part, at the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold, transferred, and conveyed, and by these presents does hereby grant, bargain, sell, transfer, and convey to the said party of the second part, its successors and assigns, all the following and all the above described property, to wit: All the right, title, and interest of the said party of the first part in and to the lands of said Rail Road Company granted by the said act of Congress and by the act of the Legislature of the State of Kansas above mentioned, to aid in the construction of said Road, as above described, and being alternate and odd sections of land lying on either side of said Road, and within a distance of twenty miles thereof, and amounting, as near as can now be estimated, to Six Hundred Thousand acres. But all the lands granted by said acts to aid in the construction of said Road, are intended to be and are hereby included in this conveyance, whether the same be more or less than that amount. Also, all the lands conveyed to said Rail Road Company by an act of the Legislature of the State of Kansas, passed and approved on the twenty-third day of February, A. D. 1866, above named, and being in amount One Hundred and Twenty-five Thousand acres of land, more or less; also, all the bonds of the said counties through which said Rail Road runs, now issued or which may be hereafter issued and delivered to said Company, to aid in the construction of its said Rail Road, a list of which is to be made and certified, and given to the said party of the second part, and the said Bonds delivered to it. Also, all the present, and in future to be acquired property of the said Rail Road Company, and all the right, title, interest and equity of redemption therein, that is to say, all the Rail Road of the said party of the first part now made and in operation, and all the Rail Road yet to be constructed, including the right of way, road-bed, super-

structure, iron, ties, splices, chairs, bolts, nuts, spikes, all lands and Depot grounds, Station houses and Depots, viaducts, bridges, timber and materials, and property purchased or to be purchased for the construction or equipment of said road, all the engines, tenders, cars and machinery, and all kinds of rolling stock, whether now owned or to be purchased by said party of the first part in the future, and all the revenues and income of said Rail Road and property, and all the franchises and rights of the said party of the first part, and all property acquired by virtue of and under the authority thereof, now in possession or to be hereafter acquired, including all machine shops, tools, implements, and personal property used therein, or upon or along the line of said Rail Road, or at its stations, or any of them, wherever situated, and including all appurtenances and appendages of said Rail Road and the property of said Company, and all its rights and privileges therein and pertaining thereto.

To HAVE AND TO HOLD the said lands, bonds and property, all and singular, and the said premises, and every part thereof, with the appurtenances, unto the said party of the second part, its successors in said trust, and assigns.

But upon the following express trust, that is to say: In case the said Leavenworth, Lawrence and Galveston Rail Road Company shall fail to pay the principal or any part thereof, or the interest, or any part thereof, which may fall due upon any of said Bonds, secured, and intended to be secured hereby, at any time when and where the same may become due and payable, according to the tenor and effect thereof, and for thirty days thereafter, then and in that case all of said Bonds shall thereupon immediately become due and payable, and it shall be competent and lawful for the said party of the second part, its successors in said trust and assigns, to enter upon and take possession of the said premises, and every part and parcel thereof, including said lands and Road and appurtenances; and upon the written request of the holders of one-tenth part of

the Bonds, which may be at any time outstanding and unpaid, it shall be the duty of the said party of the second part, its successors or assigns, to enter upon and take possession of all and singular, the said Rail Road and property above described, and as the attorney in fact, or agent of the said party of the first part, by itself, or its agents duly constituted, have, use and employ the Rail Road and its appurtenances and property thereto belonging and proper for its use, making, from time to time, all needful repairs, alterations and additions thereto, and after deducting the expenses of such repairs, alterations and additions, apply the proceeds of said premises to the payment, *pro rata*, of the principal and interest of all of said Bonds remaining unpaid; and, also, to have and possess all of the said lands and all obligations and securities which may have been received for any such as may have been sold, and shall hold all of said County Bonds conveyed by this instrument, and which may then remain unsold, and all other property conveyed hereby, or intended to be conveyed, and receive the avails thereof, and the proceeds of the sales thereof, and the interest of all such securities, and after paying all proper expenses connected with the management and care of the same, including Taxes and all expenses necessary to the care of and due administration of the trust hereby created, relative thereto, and indemnifying itself, as aforesaid, apply the surplus moneys in the manner above stated in payment of said principal and interest moneys which may be unpaid upon said Bonds; or the said party of the second part, its successors in the said trust and assigns, at their discretion, *may*, and on the written request of the holders of one-tenth of said Bonds then unpaid, *shall* cause the said premises, including said lands and securities, or so much thereof as shall be by them deemed necessary to pay and discharge the principal and interest of such of said Bonds as may be unpaid, together with all the expenses of said sale, to be sold at public auction, at Topeka, in Kansas, giving Thirty days' notice of the time and place and terms of such

sale, by publishing the same in one of the principal newspapers, for the time being, in each of the Cities of Boston and New York; and upon such sale to execute to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance in fee simple for the same, which shall be a bar against the said Leavenworth, Lawrence and Galveston Rail Road Company, party of the first part, its successors and assigns, and all persons claiming under it, or them, of all right, interest, or claim in or to the said premises and property, or any part thereof; and the said Trustee shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing the said property, and enough to indemnify and save itself harmless from and against all liabilities arising from this trust, apply so much of the proceeds of the said property as may be necessary to the payment of the principal and interest of the said Bonds unpaid, and shall restore the residue thereof to the party of the first part. It being expressly understood and agreed that in no case shall any claim or advantage be taken of any valuation, appraisement, redemption, or extension laws, by said party of the first part, its successors or assigns, nor any injunction or stay of proceedings be had, or any process be obtained or applied for by it or them, to prevent such entry, sale and conveyance as aforesaid.

It is hereby expressly agreed and understood that it shall be lawful for the said Rail Road Company, or its successors, to dispose of the current net revenues, except as herein otherwise provided, of the Rail Road hereby conveyed, in such manner as it shall elect, until default shall be made in the payment of the principal or interest of said Bonds, or of some one of them.

And it is hereby expressly agreed and understood, and it is one of the terms of this conveyance and Deed of Trust, that all the lands above described and hereby conveyed, or intended to be conveyed, as well those derived from the Government of the United States through the Treaty and Act of Congress, and

the Legislature of the State of Kansas, hereinbefore mentioned, as those derived from the State of Kansas in manner aforesaid, shall be scaled and appraised at such price as may be deemed to be just and reasonable by both the parties hereto, and a minimum price fixed thereupon, at which they may be sold, either for cash, or part cash, or partly on credit, or wholly on credit, as may be deemed just and expedient, but such minimum price may be changed, if thought advisable, by the joint action of the said party of the first part and party of the second part, their successors and assigns.

And as the object of this Indenture is to provide a fund for the full payment of said Bonds, both principal and interest, and not to withhold from settlement and sale said lands, but on the contrary to sell the same to actual settlers as rapidly as possible, and thus bring them into cultivation and improvement, it is expressly understood that the said party of the first part shall establish an office for the sale of said lands, at some convenient place where the same shall be offered for sale, at not less than the minimum price put thereupon; but that deeds of conveyance for said lands, or any parts thereof, shall only be made when the whole purchase price agreed upon shall be paid for the same; and that in all cases where the purchase money shall not be paid down at the time of the contract of purchase, a contract in such form as shall be directed by the Board of Directors and counsel of the said party of the first part, shall be executed to the party purchasing said lands, or any of them, setting forth clearly the terms of sale and the payments to be made, and the conditions upon which the purchaser shall be entitled to a full deed conveying the lands specified in said contract to the said purchaser, his heirs and assigns.

And whereas, it is important that every purchaser shall be sure of his title, and that the conveyance thereof shall not be impeded or restricted by unnecessary formalities, it is, therefore, the express understanding that the said party of the first part shall be so far the agent of the said party of the

second part, its successors in said trust and assigns, that the deed of the said first party, duly executed and acknowledged, shall operate as a release of the tract of land so sold from the operation and effect of this Indenture and Deed of Trust, and convey a full and perfect title; and the said party of the first part shall have this authority and power, in the name of the said second party and its successors, to release the titles of land sold, or contracted to be sold, on payment therefor, from the operation of this Mortgage or Deed of Trust, until breach of the condition of this Instrument, or until a revocation of this authority is made and duly recorded in every county where said lands lie; and when any purchaser of said lands, or any part thereof, shall have paid in full the price agreed to be paid for the same, to the said party of the first part, its successors or assigns, he shall be entitled to receive, and shall receive, a deed in fee simple for said lands, free and clear of this incumbrance and Deed of Trust, in the manner above specified.

And the said party of the first part hereby agrees that all the money realized upon any contract of sale shall be appropriated to the purpose of providing for the payment of the said Bonds, principal and interest; and that an account of all such sales, or contracts of sales made, and of all moneys realized from the sale of said contracts, shall, once in three months, be made up and placed in the hands of the said party of the second part, its successors in said trust or assigns, and all moneys realized from said sales paid over to said second party, and the said second party, personally or by its agents and attorneys duly appointed, shall at all times have access to the books and papers and records of the land office of the said party of the first part.

It is hereby expressly agreed and understood, that the County Bonds herein mentioned and intended to be conveyed may be sold at such time or times, and on such terms, and for such prices as may be mutually agreed upon by the parties hereto. And it is also hereby agreed and understood, by and

between the parties hereto, that the proceeds of the sale of all the said lands herein described, and of all securities received therefor, and the proceeds of all said County Bonds, and all collections thereon, shall constitute a Sinking Fund in the hands of the said party of the second part, its successors or assigns, to be applied, during the first five years from the date hereof, to the payment of the interest on the Bonds of the said first party, intended to be secured hereby; and that any and all surplus beyond the amount requisite for that purpose shall, for that time, accumulate in their hands and be invested in such securities—at all times convertible into money—as from time to time may be agreed upon in writing by the parties hereto; and out of such accumulation, the party of the second part may reserve One Hundred Thousand Dollars as a contingent fund, to provide for possible contingencies in the payment of interest and otherwise relative to said Bonds, which said sum may be kept and maintained and invested in such securities as the parties hereto, or their successors, may mutually agree upon; and at the end of said five years, if such accumulation shall amount to Two Hundred Thousand Dollars or upwards, over and above the said reserved fund for contingencies, and thereafter and as often as it shall amount to Two Hundred Thousand Dollars above that sum the same shall be applied in the payment and retirement of said Bonds, at par value thereof and accrued interest thereon, which said Bonds, so to be paid from time to time, shall be determined by lot in such manner as shall be just and fair and as shall be agreed upon in writing by the parties hereto or their successors, and recorded at length upon the records of the parties, and open for examination to the holders of said Bonds; and when and as soon as the numbers of said Bonds thus to be paid and retired shall have been determined by lot, in manner aforesaid, from time to time, it shall be the duty of the said party of the second part, and its successors in said trust, to publish a notice thereof in each of the Cities of Boston and New York for three weeks succes-

sively, once in each week, stating therein the time and place in each of said Cities when the said Bonds will be paid, and requesting their presentation for payment at said time and place: and after the expiration of said time the said Bonds so numbered and drawn shall cease to bear interest, and the said party of the first part shall not be liable for interest accruing subsequently to that time, but shall be required to pay the principal of said Bonds on presentation.

And the said party of the first part hereby agrees that any failure to render the quarterly statement of the contract and sale of lands as herein provided, and of the expenses connected with said lands, and any failure to pay over the money received from said lands to the said party of the second part, or its successors in said trust, every three months, upon such statement; and any refusal to allow an examination of the Books of the said party of the first part, as herein provided, shall be deemed to be a forfeiture of the conditions of this Deed of Trust, and thereupon the said party of the second part, its successors in said trust and assigns, may enter upon and take possession of the premises and property herein described, and have and hold the same with the same rights and powers, and in the same manner, and upon the like request of the Bondholders as in the case of failure to pay the principal or interest on the Bonds hereby secured, and thereupon shall be entitled to the possession and control of the property above described, and of all contracts or securities received for lands sold, or contracted to be sold, to be held and managed or sold under the powers herein contained, for the benefit of the holders of said Bonds.

And the said party of the first part, for itself and its successors, hereby covenants and agrees to execute and deliver any further reasonable or necessary conveyance of the said premises, or any part thereof, to the said party of the second part, its successors and assigns, for more fully carrying into effect the objects and purposes of these presents, and of

making them embrace the property and effects herein described and intended to be conveyed.

It is hereby mutually agreed that, upon the payment of the principal and interest of said Bonds, the estate hereby granted to said party of the second part shall be void, and the right to the premises hereby conveyed shall revert to and revest in said party of the first part, its successors or assigns, without any acknowledgement of satisfaction, re-conveyance, re-entry or other act; and that said party of the second part, its successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent employed by them, when such agent shall have been employed with reasonable precaution, and that the said second party, and its successors in said trust and assigns, shall be entitled to reasonable compensation for their services in the management of said trust.

It is hereby further mutually agreed, that in case of a failure for any cause, or refusal to act in the matter of said trust, by the said party of the second part, its right, estate, interest, power and control in the premises shall be divested, cease and determine, and the holders of a majority of said Bonds may thereupon apply to any Court in the State of Kansas having jurisdiction of the premises, to appoint some proper person or persons to act as Trustee or Trustees herein; and such new Trustee or Trustees, when appointed, shall become vested, for the purposes aforesaid, with all the right, interest and power requisite to enable him or them to execute the purposes of this trust, without any further or other authority, release or conveyance for the same. But should it be desirable or necessary, the said parties hereto shall each execute and deliver such releases and conveyances as Counsel learned in the law shall deem advisable.

And the said party of the second part hereby accepts the trust created by these presents.

IN WITNESS WHEREOF, the said Leavenworth, Lawrence and Galveston Rail Road Company has caused its corporate seal to be hereto affixed, and its corporate name to be hereto subscribed by its President, the day and year first above written, and the said second party on the same day and year has caused its Corporate Seal to be hereto affixed, and the same to be subscribed by its President.

THE LEAVENWORTH, LAWRENCE AND GALVESTON RAIL ROAD COMPANY, by

JAMES F. JOY,

President.

Attest:

AMOS T. HALL,

Secretary.

THE FARMERS LOAN AND TRUST COMPANY OF NEW YORK, by

R. G. ROLSTON,

President.

Attest:

GEO. P. FITCH,

Secretary.

STATE, CITY AND COUNTY OF NEW YORK, } *ss.*

On the 26th day of July, A. D. 1869, before me came R. G. ROLSTON, whose name is subscribed to the foregoing instrument, and with whom I am well acquainted, known to me to be the President of the Farmers Loan and Trust Company, who, having been by me duly sworn, says that the seal which is affixed to said instrument is the corporate seal of said Farmers Loan and Trust Company; that it was so affixed by the authority of said corporation, and that he subscribed his name thereto by the like authority, and that he resides in the city of New York.

Given under my hand and official seal this 26th day of July, 1869.

SEAL.

JAMES W. HALE,
Public Notary,
54 Wall Street.

STATE OF ILLINOIS, } ss.
County of Cook, }

CITY OF CHICAGO.

Be it remembered that on this twelfth day of July, A. D. 1869, before me, a Commissioner residing in the city of Chicago, County of Cook, and State of Illinois, duly commissioned by the Governor of the State of Kansas, to take acknowledgments and proof of deeds, and other instruments in writing, under seal, to be used or recorded in said State of Kansas, personally came JAMES F. JOY, President of the Leavenworth, Lawrence and Galveston Rail Road Company, who is known to me to be the person whose name is signed to the foregoing Deed of Conveyance, who being by me duly sworn, deposes and says: That he resides in Detroit, in the County of Wayne, and State of Michigan; that he is President of the Leavenworth, Lawrence and Galveston Rail Road Company; that he knows the Corporate Seal of said Company; that the Seal affixed to the foregoing Conveyance is the Corporate Seal of said Company; that it was affixed by order of said Company, and that he signed his name to said Conveyance by like order, as President of said Company, and acknowledged that he executed and delivered the said deed as his free and voluntary act, for the uses and purposes therein set forth, and that the said Company also executed said Conveyance as its free and voluntary act, for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and Official Seal this twelfth day of July, A. D. 1869.

SEAL.

PHILIP A. HOYNE,

Commissioner for Kansas in Chicago.

The foregoing instrument was duly recorded in the counties of Douglass, Franklin, Anderson, Allen, Neosho and Labette before any of the bonds secured thereby were issued.

AMOS T. HALL,

Secretary.

RECEIVED
SEP 25 1991
A. D. S.